

DROWNING ON DRY LAND: RETHINKING MEXICAN MIGRATION POLICY FROM A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

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As structural issues such as organized crime and corruption deepen in Mexico, migrants are caught in the crosshairs, resulting in migratory routes rife with danger and a worsening human rights record. This paper explores how human rights practices for migrants in Mexico can be improved with respect to state policy. I begin by establishing the international and domestic law in place before moving into an assessment of the extent to which rights are guaranteed. I addresses the disconnect between legal instruments and what happens on the ground, analyzing the influence of securitization as well as social and structural factors at play against migrants in policy-making and implementation.

Finally, I propose policy solutions in light of protection gaps and constraints, arguing for a non-traditional regularization of migration through Mexico that would free migratory routes from organized crime networks that pose the majority of the risk. In addition, I advocate for: the incorporation of the National Human Rights Commission into the judicial system in order to provide accountability for crimes committed against migrants, superior training of state migration workers and streamlined protocol, along with funding increases for COMAR, Mexico's refugee agency.

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Chapter 1 - Home is the mouth of a shark

Introduction

Migration as a human phenomena has always existed. Modern migration is deceptively complicated; it is not simply about individuals passing over a border, or the lands between one boundary and the next. Today's migrants find themselves at the intersection of movement and politics.

Since 2014, the Central American migration crisis has skyrocketed, with increasing numbers of individuals choosing to leave Central America and beginning the journey north to the United States. The crisis is rooted in economic and political grievances. In the 1980s and 1990s, a series of civil wars ravaged the region of Central America known as the Northern Triangle - Guatemala, Honduras, and El Salvador. In El Salvador, nearly seventy five thousand died (1979-1992), with that number rising to as many as two hundred thousand in the neighboring Guatemala (1960-96). The result was widespread institutional failure throughout Central America. As government and state institutions crumbled, gangs were deported back from the U.S. to fill the power vacuum and assume a parallel role.¹ Criminal organizations have a monopoly over violence and in some instances even offer social services, entering into a symbiosis with communities that legitimize their power. Today, MS-13 and MS-18, the region's two most powerful gangs, boast an estimated membership of as many as eighty five thousand.²

¹ Meyer and Pachico (2018) describe this process. It is important to note the influence of U.S. deportation policy in the rise of gangs in the Northern Triangle. Deporting gang members back to states weakened from civil war allowed them to gain widespread power quickly. MS-13 is a notable example of this phenomenon and one of the most deadly gangs in Central America today.

² Congressional Research Service (2016)

Their control, however, is brutal. Gangs such as MS-13 recruit from teenagers and adolescents in local communities. The punishment for the failure to join is death. Their violence has reached such a level that the region consistently tops global crime indices.³

Because of gang violence, there is a lack of state protection for Central Americans. For many, statehood exists only in theory. Their governmental institutions are so weak that they might as well be negligible. Many Central Americans, in effect, have no rights, nor the right to have them. While once they reach Mexico, they are undocumented, on the periphery of state belonging and far from home. They are Arendt's refugees, lacking the guarantee of rights from the states to which they belong and subjected to the violence of organized crime groups.⁴ They flee across international borders attempting to find shelter abroad, but North American states do not want them. Their failure to receive neither citizenship nor temporary protection forces them to live undocumented with the fear of being apprehended and sent back. They have no power in comparison to North American governance structures. When the human rights law that does exist is not respected, there are next to no measures by which they can seek recourse. They are subject to the whims of the police.⁵ Their statelessness denies them the ability to defend themselves against institutions both domestically and abroad.

Mexico, by nature of sitting midway between Central America and the United States, incurs the majority of transit migration. Central Americans travel through a complex system of routes, oftentimes with the aid of smugglers called 'coyotes,' to avoid detection by state

³ Council on Foreign Relations (2018) describes the history of civil war in the Northern Triangle.

⁴ In *Origins of Totalitarianism*, the political philosopher Hannah Arendt describes the refugee as one who not only lacks rights, but the right to have rights. This is, per her view, what it means to be without state protection. A refugee is one who is persecuted and made 'outcast' by the state, but rights are guaranteed by the state. Without its protection, the refugee lacks neither rights nor the ability to have them.

⁵ Kulish (2018) writes on the relationship between Central American migrants in Mexico and the police.

authorities and thereby deportation.⁶ Mexican migratory policy, however, is heavily influenced by the United States, which has put increasing pressure since 2014 on Mexico and Central America to handle the Central American forced migration crisis in ways that appeal to its contemporary anti-immigration interests.⁷ Policies such as increased policing and militarization of the Mexico/Guatemala border as well as increased deportation of apprehended irregular Central American migrants are evidence of this.⁸

Mexico balances humanitarian concerns with pressure from the United States and its own national agenda while migrants move across its borders. On Friday, October 19, 2018, a migrant caravan from Honduras arrived at the Mexican border. Its numbers swelled to over 2,000 and continued to increase, with all the participants intending to travel to the United States.⁹ The caravan, however, was stopped on the Mexican border. The United States put pressure on both Mexico and Honduras to ensure that it would not allow them to enter, levying the threat of foreign aid reduction as a consequence for allowing the caravan to pass.¹⁰ Meanwhile, thousands of forced migrants were caught in the crosshairs of competing interests with no state willing to offer protection.

The result is a North American refugee protection system with large gaps. Unlike other forced migration crises which have resulted in refugee camps such as Dadaab in Kenya¹¹ or Cox's Bazar in Bangladesh,¹² there are no camps in Mexico or the United States. There is

⁶ Comisión Nacional de Derechos Humanos

⁷ Gonzalez-Murphy and Koslowski (2011)

⁸ Gonzalez-Murphy and Koslowski (2011)

⁹ Cuffe (2018)

¹⁰ Cuffe (2018)

¹¹ Grandi (2017)

¹² Human Rights Watch (2018)

nowhere for Central American forced migrants to take shelter for an extended period outside of their country of origin beyond asylum, which is hardly a guarantee.

Within Mexico is a decentralized collection of shelters called albergues, run by churches, NGOs, and community groups that offer food, shelter, and information to migrants travelling through.¹³ The system of albergues, however, offers only temporary protection outside of the state. As they work under minimal resources, serving irregular migrants seeking to avoid state detection so as to reach the United States, albergues must operate on a sub-national level and cannot provide assistance to all migrants who need it. As such, they fail to offer even the minimum protections that a camp might.¹⁴ Without the security of a stable place to call home and the okay of a state that deems their presence acceptable, Central American migrants must move quickly and may only use albergues as a brief respite.

As opposed to protection, the North American immigration system relies on deportation and militarization to keep Central American mass migration at bay. Central American migrants are labelled as a security risk by the United States, which claims that they usher in gang violence, drugs, and instability.¹⁵ Under this rhetoric, Central Americans become a threat to national security instead of a vulnerable population in need of international assistance. However, Central American migration is largely due to institutional breakdown and gang violence. The migrants who flee across North America to seek protection are victims of the organized crime violence that North American states claim they create and bolster.¹⁶

¹³ National Human Rights Commission of Mexico (2018)

¹⁴ National Human Rights Commission of Mexico (2018)

¹⁵ Hesson (2018)

¹⁶ Meyer, Maureen and Pachico, Elissa (2018)

The way that U.S. citizens and media speak and write about the migration crisis not only informs broad understandings of it, but can also affect policy change that pushes the United States further away from protecting migrants. One example is the U.S. government's "securitization" rhetoric in the migration discussion. Portraying migrants as violent threats and migration as an existential security risk to the nation dehumanizes migrants and bolsters arguments that they should not be protected. Fundamentally, Central American forced migration is not about United States national security. It is about the results of violence, crisis, and instability to such a degree that one makes the choice to leave behind everything they know to seek shelter abroad. It is about individuals and their need for protection.

Due to securitization policies, regions like the United States and Western Europe fail to understand the nature of forced migration crises accurately, seeing them as things that happen to them and within their territory, whereas the conflicts that produce mass migration occur elsewhere and the majority of the migrants themselves are not hosted by the Global North nor make it to their borders. In this way, the manner in which state rhetoric frames the Central American forced migration crisis distorts how it is understood.

This paper addresses the disconnect that exists between policy and the current situation. I focus my discussion of Central American migration in Mexico as the region within which the majority of abuses occur. I offer an analysis framed in human rights, arguing for particular protections for migrants based on their humanity rather than belonging to a particular nationality. Human rights act as an equalizer. They are an affirmation of baseline treatment that individuals should be afforded by nature of being human. They are a denial of circumstances that reach beyond this standard and violate a certain aspect of our humanity. In this paper, I demonstrate

that human rights have not been respected for Central American migrants in Mexico and that state action should address these concerns. I offer concrete policy solutions that aim to fill the protection gaps that exist.

I begin by establishing the legal context, offering an overview of Mexican and international law pertaining to migration framed in a sociohistorical context that explains the trajectory of law and the social forces that shaped it. Next, I assess the extent to which law is put into practice, demonstrating widespread non-compliance and the breakdown of policy on a local level. I address the disconnect between current policy and what happens on the ground, analyzing the influence of securitization as well as social and structural factors at play against migrants in policy-making and implementation.

After pinpointing the protection gaps, I assess possible solutions in light of existing recommendations, arguing for a non-traditional regularization of migration through Mexico that would free migratory routes from organized crime networks that pose the majority of the risk. In addition, I advocate primarily for: the incorporation of the Mexican human rights court into the judicial system in order to provide accountability for crimes committed against migrants, superior training of state migration workers and streamlined protocol, along with state funding for NGOs already doing the groundwork to provide safety and security for migrants in Mexico.

This paper does not offer an ideal humanitarian vision of migration policy nor assume that such problems are too difficult or broadly institutionally influenced to be addressed. Human rights policy need not perfect crisis management in order to be effective. This paper argues that there are concrete, manageable actions that Mexico can and should take to alleviate some of the abuses occurring within its territory. Despite an array of factors at play that complicate

policymaking and dampen the capacity of Mexico to act in the human rights interest of migrants, positive change is within its reach.

Chapter 2 - Está pero no está

Legal Context

Understanding the human rights context for migration within Mexico requires understanding the legal context. In addition to international human rights treaties to which Mexico is a signatory, Mexico has produced a number of laws pertaining directly to migration, human rights, and population control that clarify and expand the provisions outlined by the country's Constitution and international law. Unlike some states that must ratify international treaties legally before they are incorporated into domestic law, the Mexican Constitution specifies that the international treaties it signs are incorporated automatically.¹⁷ As such, there is an expanded array of law that applies to migrants in Mexico beyond the country's domestic law.

In this chapter, I will provide a background of Mexican legal history pertaining to migration law with an emphasis on the factors that shaped it. I will then offer a summary of the domestic and international legal architecture, including relevant provisions, in order to establish a picture of the applicable law and its relevance to Central American migration.

As with many states, Mexico's migration policy can be read as a blueprint for the way in which it understands itself as a nation. Borders, the physical manifestation of the state, are enforced by policy that controls who is allowed access and who should be kept out. In the nineteenth through the early twentieth century, Mexico incentivized foreign in-migration to

¹⁷ Article 1 of the Mexican Constitution states that "In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself."

encourage population growth and modernization. Large numbers of immigrants were allowed in with relatively minimal restrictions.¹⁸ Its immigration policies remained liberal up until the 1970s, a reflection of the direction in which Mexico intended to go as a nation.¹⁹

As Central America entered into a period of war and instability, however, large numbers of migrants began to move across the southern border. During this time, Mexico's government no longer viewed its population as insufficient for reaching its development goals. Rather than continuing a policy that encouraged foreigners to migrate and naturalize, Mexico implemented immigration restrictions in the wake of Central American migration. This exemplifies the ways in which Mexican response to migration reflects deeper concerns.

The result was the **General Law of Population** (Ley General de Población), enacted in 1974, an attempt to tighten the border and control the changing dynamics of migration. The General Law of Population laid the groundwork for decades of migration policy that made it difficult for foreigners to gain legal entry and residence. Requirements included that migrants be approved on the grounds of: physical and mental health, economic viability for the Mexican state, security, and even the ability to procure private healthcare.²⁰ In addition to strict entry requirements, the General Law of Population levied harsh controls on migrants travelling through Mexican territory irregularly. Entering Mexico without valid travel documents was a felony offense punishable by up to two years in prison for a first offense and ten for a second.²¹ The result was a drastic reduction in the number of migrants able to gain entry or stay within Mexico.²²

¹⁸ Gonzalez-Murphy and Koslowski (2011)

¹⁹ Gonzalez-Murphy and Koslowski (2011)

²⁰ Gonzalez-Murphy and Koslowski (2011)

²¹ Gonzalez-Murphy and Koslowski (2011)

²² Gonzalez-Murphy and Koslowski (2011)

This is in contrast to the migratory situation on Mexico's northern border. The beginning of the General Law of Population coincided with large emigration flows of Mexican nationals to the United States. In terms of migration, Mexico's relationship with the United States was the opposite of that with Central America. Instead of being on the net receiving end of migratory flows, at the time the General Law of Population was enacted in 1974, Mexico was sending vastly more migrants to the United States than it was receiving in return. The result was a role reversal. As opposed to being the one with the choice to admit or deny, Mexico was faced with closed doors in the North and prejudice against those who managed to gain entry.²³

As the United States enforced increasingly harsher policies towards Mexican migrants, Mexico decried U.S. action as prejudicial and unjust.²⁴ The response from the United States was to point a mirror towards Mexico's own policies. Due in part to the General Law of Population, criticisms of harsh immigration policy in the North fell on deaf ears.

Despite the hypocrisy of Mexican policy in contrast to its demands for its own emigrants, reform did not come until decades after the General Law of Population was enacted. Criticism from the United States provided the impetus and the means for reform. In 2011, Mexico ushered in a new era of migration policy that restructured the foundation of migration in Mexican territory. The result was a collection of laws that remain Mexico's legal migration code: amendments to the 2008 General Law of Population; the 2011 Law of Refugees, Complementary Protection, and Political Asylum; and the 2011 Law of Migration.

However, Mexican law is often based upon international law. As such, it is important to consider the migration and human rights treaties to which Mexico is party. These include: the

²³ Gonzalez-Murphy and Koslowski (2011)

²⁴ Waller, Gonzalez-Murphy and Koslowski (2011)

Universal Declaration of Human Rights, the Convention Relating to the Status of Refugees (including the '67 Protocol), the Cartagena Declaration, and the Convention on the Rights of the Child.

Originally written in 1948, the **Universal Declaration of Human Rights** is intended to be an international agreement to establish baseline human rights. Its thirty articles outline an array of social, cultural, and economic rights, including the right to petition for asylum²⁵ and the right to a nationality.²⁶ The latter is an interesting assertion of the primacy of state-centered rights in a human rights document, the assumption of human rights being rights inherent in the individual rather than a state as guarantor. The Universal Declaration is frequently cited as the founding human rights document and, as such, is a cornerstone of the principles discussed throughout the paper.

The **1951 Convention on the Status of Refugees** is the core international treaty establishing the legal precedent for the treatment of refugee populations. Its provisions are grounded in Article 14 of the Universal Declaration, which affords the right to seek protection abroad.²⁷ Written following the Second World War, its vision and content are heavily influenced by European mass migration.²⁸ Finding itself with redrawn borders and a population in disarray and diaspora, the international community was forced to come to terms with how to deal with forced migration flows. Of particular importance is how it laid the foundation for the definition of the refugee: one with a well-founded fear of persecution.²⁹

²⁵ Article 14 of the Universal Declaration of Human Rights states that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”

²⁶ Article 15 of the Universal Declaration of Human Rights states that “everyone has the right to a nationality.”

²⁷ The introductory note of the 1951 Refugee Convention by Antonio Guterres, the 10th High Commissioner for Refugees of the United Nations, elaborates on this legal basis.

²⁸ Price, M. E. (2006)

²⁹ Price, M. E. (2006)

The persecution clause has grown to encompass a wide body of literature and debate. While persecution as the basis of refugee status might make sense in the postwar context, as forced migration crises evolve, its definition has become increasingly restrictive, leaving swathes of forced migrants without legal grounds for international protection. This is particularly true in the case of the Central American migration, with only some migrants falling into the proper categories for protection abroad and others deported back to a region unable to guarantee their survival, let alone the enjoyment of the full spectrum of their human rights.

The 1951 Refugee Convention and its '67 Protocols remain the core treaties on forced migration on a global scale, with the exception of the United Nations Convention on Statelessness, which has tangential application to migrants. However, regional treaties have emerged to deal with migration on a smaller scale. Chief among these treaties is the Refugee Convention of the Organization of African Unity (OAU) and the Cartagena Declaration among Latin American states. Both treaties were developed on the foundation of the UN Refugee Convention but adapted to their regions' particular migratory contexts.

This paper is primarily concerned with the Cartagena Declaration as the regional document governing migration from Central America through Mexico, although it acknowledges that treaties and policy exist in broader conversation and a treatment of the law focused purely on Latin America disregards this interrelationship. The **Cartagena Declaration on Refugees**, enacted in 1984 in Cartagena de los Indios, Colombia, expanded the definition of the refugee to include "persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order." This

broadened definition allows for many more individuals to qualify for protections under regional refugee law and offers an example of how law can adapt to evolving migrations.

In addition to documents such as the Universal Declaration and international migration treaties, the UN **Convention on the Rights of the Child** is of particular importance to the Mexican context. Many of the migrants passing through Mexico are undocumented child migrants in a heightened state of vulnerability due to the nature of gang violence and recruitment mechanisms in Central America.³⁰ This convention serves as an instrument in expanding the legal protections afforded to a large proportion of the migrants in Mexican territory.

Now that international law has been considered, I move into a discussion of the Mexican domestic law applicable to migrants. The adoption of the **Law of Migration** in 2011 marks a turning point in Mexico's conceptualization of migration. Before 2010, discussion of transit migration as a political issue was minimal.³¹ With the emergence of the Law of Migration and reforms in the legal architecture surrounding migration, however, a new attention was given to the issue. Inherent in the reforms was a recognition of the scale and importance of the Central American migration crisis as both a national and regional concern.³² By passing legislation specifically intended to cover migration issues, the legislation marked a fundamental first step in moving towards a human rights-oriented policy approach.

Broadly, the Law of Migration details how government agencies should deal with migration. It offers guidelines for how to handle migration on a logistical level, from visa issuance, to apprehension and detention protocol, to requirements for naturalization. For the purposes of my discussion, the Law of Migration serves as an important foundation and

³⁰ For a comprehensive look at gang activity in the Northern Triangle, see Seelke (2016).

³¹ Gonzalez-Murphy and Koslowski (2011)

³² Gonzalez-Murphy and Koslowski (2011)

recognition on behalf of the state of the importance of migrant rights. However, its poor implementation leaves it an ideal to work towards and its protection gaps are areas of policy focus.

The **Law of Refugees, Complementary Protection, and Political Asylum** covers a subset of migration law pertaining to forced migration. The literature organizes migration into two categories: forced and not forced. The notion of whether or not migration is forced is arguable, as there is often an element of choice and migrants are autonomous actors that exercise a degree of control over their migration. The difference in forced migration lies in the conditions under which an individual flees. If no option exists whereby one might stay and have the full extent of their human rights respected, their migration might be considered ‘forced.’³³

The Law of Refugees, Complementary Protection, and Political Asylum carves out a legal code for cases within this grey area: who should be considered appropriate for asylum and refugee status within Mexico; how their cases should be processed; and which agencies have jurisdiction over specific types of migration and how they interact. The law outlines explicit regulations for the management of asylum cases that include details such as the maximum length of time in detainment (60 days)³⁴ up to the minimum number of meals required.³⁵

³³ ‘Forced migration’ is not a legal distinction. That being said, Gibney and Shacknove (1985) provide theoretical frameworks for how we might understand the phenomenon that I draw on in my discussion.

³⁴ Article 24 of the Law of refugees, Complementary Protection, and Political Asylum specifies a maximum of 15 consecutive work days of detention with the exception of cases in which obtaining documentation from a migrant’s country of nationality proves particularly difficult and necessitates delays. Regardless, detention should not exceed 60 days.

³⁵ Article 107 of the Law of Migration says that “Attend to the nutritional needs of the foreigner detained, offering him or her three meals per day. The Institute must ensure that food is of adequate quality. Individuals with special nutritional needs, such as children, adolescents, elderly people, and pregnant or lactating women, will receive an adequate diet so that their health is not affected while their migratory status is being defined.”

Although derived from law, policy is an independent construction, a means of actualizing law. However, in Mexico, policy has failed to bring law to fruition. Mexico has struggled with corruption since the end of the revolution and the establishment of its democracy. As evidenced by the legal architecture outlined by the domestic and international law, Mexico has a progressive outlook on migration. But only in theory. Law exists inasmuch as its capacity to be followed. The case for Mexico, unfortunately, is that its migration law often is not.³⁶

This phenomenon is referred to by some as *está pero no está*, or the law “is there but it’s not there.” Mexico has a large body of progressive migration legislation that is not enforced. Provisions outlined for migrants in the Law of Migration or the Law of Refugees, Complementary Protection, and Political Asylum give the impression of a utopian society in which irregular migration risks nothing more than the prospect of deportation. The reality, however, is that migrants in Mexico face an immense amount of insecurity and rights violations with next to no institutional repercussions or means to seek recourse.³⁷ Were the law outlined in the aforementioned documents followed explicitly, there would not be a human rights crisis to the extent that there is for migrants in Mexico today.

What would cause Mexico to enact a body of progressive migration legislation that it is not implementing? What forces are pushing Mexico against acting in favor of the human rights of its migrants? What sort of calculus does the state undergo in pursuing seemingly progressive policy while a reality of abuse and violations rests beneath the surface? Coming to terms with the answers to these questions is at the crux of working towards improvements for the safety and security of migrants in Mexico.

³⁶ For information on the implementation of human rights law in Mexico, see reports by the Mexican Commission for the Defense and Promotion of Human Rights.

³⁷ See the work of the Mexican Commission for Defense and Promotion of Human Rights for more information.

For migrants in Mexico, rights are a dream of politics and philosophy with no grounding in their own reality. They are there, but they are not there. Establishing a system in which rights for migrants might flourish, even within the networks of corruption and crime that plague Mexico, should be a primary goal for a state looking to act in the best interest of its security and the common humanity of individuals moving within its borders. This will be a foundation of this paper's discussion moving forward.

Chapter 3 - There's just so much road ahead

Abuses on the Migrant Trail

Public discourse in the United States focuses on the U.S.-Mexico border as the beginning of the migration narrative. The dangers it poses for those who wish to cross are centered: the Rio Grande and the bodies it consumes, border patrol and the security mechanisms that work to ensure undocumented migrants cannot breach it, the process of avoiding state authorities after crossing, and the challenges of living undocumented. The border has taken on an image and a significance in the United States that transcends and centers it as the core of the journey, the singular hurdle that stands in the way between migrants and their destination. It is easy to be left with the impression that Mexico is but a small part of the migration, a bit of land that might take days to cross.

The reality, however, is that the majority of the insecurity that migrants face in traveling from Central America to the United States exists in Mexico. For migrants travelling North, Mexico is the great barrier that they must cross; the border that separates the United States and Mexico is but the end of a much longer journey. The failure to address Mexico's role in significant human rights abuses related to Central American migration has hindered the international community's capacity to act and has allowed for the continuation of a human rights crisis that is only escalating. As such, effective human rights policy must work to address Mexico and the abuses and insecurity faced within it.

The roots of these misconceptions about Central American migration originate in part from the established narratives surrounding regional movement. The history of Mexicans seeking entry into the United States--and constituting the primary population of undocumented migrants--³⁸have cemented an idea in the public consciousness about migration from Latin America. The archetype is the poor economic migrant trying to gain entry into the United States to better his or her life or the lives of their family members, not a forced migrant or refugee fleeing for their survival. Notions of Central American migration are seen through the lens of these stereotypes that refract reality and our ability to separate what exactly is happening today from earlier migrations.

The Central American migration that has accelerated over the course of the last decade, however, is a separate phenomenon. It has occurred in response to a variety of sending factors, in turn produced by separate socio historical factors unique to the Northern Triangle. In addition, Mexicans decades ago versus Central Americans today move over Mexico in different ways reflective of their relationships with the state. Perhaps more importantly, they move within entirely separate security contexts, both because of their nationalities and because of the changing dynamics of insecurity in the region.

Central Americans are undocumented within Mexico as they are in the United States. Similar prejudice against migrants exists in Mexico as it does within the United States. But unlike in the United States, organized crime has Mexico in a chokehold, with a monopoly on illicit markets. As drug trafficking groups have gained power and influence within Mexico, their control over undocumented migration has sharpened. Drug traffickers occupy the top of the

³⁸ Although undocumented migration is often difficult to evaluate, data is widely available on this phenomenon. The Migration Policy Institute offers current numbers. Precise demographics, however, are impossible to calculate.

pyramid of Mexican illicit markets and tax smugglers, wielding the threat of violence against them or the migrants they carry for the failure to pay.³⁹

As mentioned previously, corruption is a significant factor in the breakdown of law and policy. Mexico has federal, state, and local police jurisdictions with their own bureaucracies and power structures. At any level, however, police in Mexico are paid minimum salaries for their work.⁴⁰ The lack of monetary compensation leads some to be swayed by bribes from organized crime networks operating within their territory.⁴¹ Even officers who might not be so quick to be swayed by a bit of extra income might be forced to work with organized criminal groups through the threat of violence.⁴²

The various illicit economies that operate beneath the surface of Mexican society are inextricably linked, and it can be difficult to separate one from another. *Los narcotraficantes* (“the drug traffickers”) occupy the highest position at the top of the pyramid, controlling drug trafficking, migrant smuggling operations, and local politics to different extents, depending on the particular group and region in question.⁴³ The result is that police corruption affects organized criminal actors, affects drug trafficking operations, and affects migrants in turn who are caught between the crosshairs. These various forces that influence migrant security deepen together and further complicate the situation for those moving through Mexico irregularly.

³⁹ Slack and Campbell (2016) describe the linkages among illicit economies in Mexico.

⁴⁰ The National System of Social Security in Mexico published a 2011 report with police pay broken down by state. The national average was \$9250.28 pesos monthly.

⁴¹ The work of Sabet on the Tijuana police force explains the relationship between pay and corruption among the forces, including the economic decisions individual police make when weighing ethical considerations alongside monetary incentives.

⁴² Sabet studies the threat of force as well. See Martinez for journalism that includes interviews with police that describe work under threats from organized crime.

⁴³ Slack and Campbell (2016) describe the relationship between illicit and licit state activities in the U.S./Mexico border region. They characterize illicit activities as struggling for power and dominance, with narco trafficking as the most powerful. Migrants, then, are subjected to double violence both from the state as well as illicit organizations.

The disconnect between law and what plays out on the ground extends far beyond police corruption. The culture of *está pero no está* pervades Mexican society. Central Americans migrating through Mexico are faced with a country that has placed yet further borders against them. Irregular migrants are easily identifiable in Mexico, whether by language or clothing or whatever other social marker might be used to classify, rank, and understand the group from the ‘other.’⁴⁴

Mexicans understand that the journey is costly and that migrants are desperate to make it to the United States.⁴⁵ Consequently, irregular migrants in Mexico frequently face upcharges on everything from bottled water to hotel rooms.⁴⁶ When confronted by authorities, migrants are given the option to pay increasingly higher fees so as to avoid detention and deportation and therefore be allowed to continue their journey.⁴⁷

This amounts to an immense system of corruption that migrants must pass through to migrate through Mexico. This is further compounded by the prevalence of xenophobia and racism against Central Americans, who receive second-class treatment by nature of their national origin. The result is that law is buried in a web of institutional factors that keep it from becoming anything beyond ink on a page. As such, there are few checks on the system, leaving migrants subject to organized crime groups and corrupt authorities to whom they are nothing more than pawns in an underground economy.

⁴⁴ The work of Oscar Martínez and interviews with Central American migrants describe the way race and power shape their migration.

⁴⁵ Kulish (2018) reports on the economics of migration through Mexico by the case of a Honduran man who describes the upcharges he encountered and the bribes frequently given to INM officials to avoid deportation.

⁴⁶ Martínez and Kulish (2018)

⁴⁷ Martínez and Kulish (2018)

In the course of this chapter, I seek to describe and explain these concerns relating to migrants' passage through Mexico, organizing my discussion by the legal frameworks outlined previously. I partition the rights that migrants enjoy into three categories that highlight the predominant protection gaps that must be filled in order to guarantee their full application and improve the human rights situation.

I begin by addressing the right to security, discussing murder, assault, disappearance, kidnapping, unsafe routes, and the role of socioeconomic status as key barriers. I then move on to a discussion of the right to due process and information, addressing institutional and state organizational failure in handling migrant populations. I end by outlining gaps in refugee and asylum protections, emphasizing conditions of detention as a key failure in the provision of these rights for forced migrants in Mexico as an important subset of the migrant population with particular vulnerabilities that must be addressed. Taken as a whole, this chapter seeks to offer a panorama of what a Central American migrant faces in their migration through Mexico, summarizing the human rights situation as it exists today as a primer for discussions of policy options that might work to address these concerns.

The Right to Security

The right to security is a foundation of the human rights framework and perhaps the most critical issue facing migrants in Mexico. Established in Article 3 of the Universal Declaration of Human Rights⁴⁸ and Article 66 of the Law of Migration,⁴⁹ migrants have the right to life and the security of person while moving through Mexico, regardless of their legal status. Despite the law, however, migrants encounter a vast array of security risks in their journey.

Information on migration through Mexico is sparse and often outdated. The dynamics of migration through the region change and reports published as soon as a year or two ago do not necessarily capture what is occurring today. Furthermore, few migrants who “complete” their migration and make it to the United States speak about their experiences due to residual trauma and distrust of the state. As such, I rely on personal accounts and journalism to fill in the gaps in the data and provide a more complete picture of what today’s migrants face in movement through Mexico.

Throughout this chapter, I incorporate information from the work of Oscar Martínez, a journalist from El Salvador who writes on Central American migration. In 2010, Martínez spent a year following migrants on the trail and published their stories in a book titled *Los Migrantes que no importan* (“The Migrants Who Don’t Matter”). His work offers a look into what migration through Mexico is like on the ground that provides supplementary qualitative data for my discussion. However, given that *Los migrantes que no importan* was published in 2013, I

⁴⁸ Article 3 of the Universal Declaration of Human Rights states that “everyone has the right to life, liberty, and security of person”

⁴⁹ Article 66 of the Law of Migration says that “a migrant’s migratory status will not hinder the exercise of his or her rights and liberties...Mexico guarantees the personal safety of migrants, regardless of their migratory status”

include it with the understanding that the narratives it describes might not fully represent Central American migrants today to whom my analysis pertains.

With deepened networks of corruption linking organized crime networks to police and government officials, journalism and activist networks have shouldered the responsibility of documenting crimes. In Mexico, those who report on human rights abuses risk their lives. Human rights journalists are routinely assassinated or simply disappear without a trace.⁵⁰ Although some cases are brought to widespread public attention, many more never surface.

In March 2017, the story of Miroslava Breach made headlines as the third journalist assassinated in Mexico that month. Breach, a reporter for the *La Jornada* and *Norte de Juarez* newspapers, reported on issues of corruption, narco trafficking, and organized crime. She was shot eight times while parked outside of her home in Chihuahua with one of her children in the vehicle. A note was left behind that read “For being a loudmouth.” To this day, her case remains unsolved, state police claiming a lack of information.⁵¹ The case of Miroslava Breach is not uncommon. Activist media, however, continues despite the risk. Faced with a state unable or unwilling to address issues of corruption, drug trafficking, and human rights abuse, a grassroots network of journalists, NGOs and civil society organizations are left chronicling the situation and bringing abuses to light, providing a modicum of pressure on the system for change. Positive change, unfortunately, has been minimal at best.⁵²

⁵⁰ Human Rights Watch describes the phenomenon of missing and assassinated journalists in Mexico. Additionally, the Attorney General of Mexico cites that 104 journalists were killed and 25 were disappeared between 2000 and 2017. Between January and July of 2017, the NGO Article 19 documented eight cases of journalists killed and one disappeared in Mexico.

⁵¹ Information regarding the Miroslava Breach case is taken from the BBC.

⁵² Yearly NGO reports (Human Rights Watch, in particular) on the status of human rights in Mexico reveal minimal progress in many respects. For some abuses, rates are on the rise. With respect to migration-specific human rights concerns, this is due in part to increasing numbers of migrants in Mexico.

But abuses are learned in this way: from the whispers of friends and family, from whatever might be unearthed from the ground, from those that leave home and do not return and the absence that they leave. In the case of Mexico, the official data on migrant security is but the tip of the iceberg, the rot of corruption, undocumented status and its protection gaps, and antagonistic state forces combining to suppress information on human rights. This demonstrates the complexity of the security situation for migrants travelling through Mexico, caught within a web of institutional forces that shape how they move.

Insecurity on the Migrant Trail

Perhaps the most visceral display of the insecurity that migrants face in the passage through Mexico is death. As with most human rights abuses, concrete estimates in absolute numbers of migrants who have died in Mexico are not available, but rough estimates of the number in the hundreds per year.⁵³ Accounts abound of death and dying along Mexican migratory routes, of cartels stopping a train and murdering dozens or a town wiped off the map from violence associated with organized crime.⁵⁴ Many migrants who travel without the aid of a smuggler die in the attempt to cross Mexico on their own, perishing in the sweltering heat of the Chihuahuan desert⁵⁵ or falling victim to La Bestia, the infamous train that migrants ride atop of

⁵³ Data is unknown on the exact number of murders. The Migration Data Portal has registered 510 deaths in 2017.

⁵⁴ The Mexican Commission for Defense and Promotion of Human Rights (CMDPDH) reports on the looting and burning of Allende by organized crime actors in response to suspected DEA involvement.

⁵⁵ Gonzalez (2018)

to the U.S. border.⁵⁶ These deaths amount to many more than the systematic killings and combine to make migration through Mexico all the more deadly.

Assault is a more pervasive and insidious abuse that migrants face in Mexico, affecting women disproportionately. Rape and sexual assault are common for women migrants, with estimates from Amnesty International finding that up to eight in ten women will become a victim over the course of their migration through Mexico.⁵⁷ Perpetrators might be anyone from state or police officials to Mexican citizens taking advantage of migrant vulnerabilities within Mexican social and legal structures. Perpetrators understand the particular vulnerabilities of being an irregular migrant in Mexico, of what it means to exist outside of the bounds of state protection and lack the ability to seek recourse for crimes committed against them. Despite laws that allow undocumented individuals in Mexico to seek medical care⁵⁸ and human rights institutions that aim to provide accountability, migrants must weigh the fear of retaliation from perpetrators and the desire to continue on to the United States in considerations of whether or not to report. This knowledge drives assault and perpetuates systems that turn a blind eye, leaving migrants to be assaulted with impunity. Sexual assault is so commonplace that migrant women often leave home with the knowledge that assault is a near-inevitability for them, having come to terms with what lies in store long before stepping foot onto Mexican soil.⁵⁹ Many go so far as to bring contraception along with them as a health and safety precaution, exemplifying the pervasiveness of the practice.

⁵⁶ For a thorough description of La Bestia and the horrors endured atop it, see Martinez.

⁵⁷ The Government of Mexico and Amnesty International estimate the frequency of assault of migrant women in Mexico to be 6 in 10. Gnam places the estimate at 8 in 10.

⁵⁸ Article 8 of the 2011 Law of Migration stipulates that “migrants...have the right to receive any type of public and private medical care, independent of their migratory status.”

⁵⁹ Fleury (2016) describes the psychology of sexual abuse in migrant populations in Mexico.

Oscar Martínez captures this in interviews with migrant women in Chiapas who describe their experiences pertaining to assault during migration through Mexico. One woman, a transgender Guatemalan named Paola, was stopped by five men from a gang in the mountains of La Arrocera, Chiapas and raped by the threat of force. Knowing that resistance was futile and that she had no hope for escape, she lied and exclaimed that she was HIV positive, begging her attackers to pull out condoms from her bag knowing it might be the only way to protect herself against disease transmission.⁶⁰ Martínez cites the practice as commonplace, describing how Paola's story has been echoed by other migrant women.⁶¹

The impunity that afflicts rape on the migrant trail is echoed in the experiences of victims. Interviews with survivors have revealed psychologies of self blame, indifference, and lack of agency surrounding their perceptions of their own assault. Few migrant women seek medical or legal attention after being raped, many describing their rape as an ugly but understandable consequence of the risk they took in migrating.⁶² Some cite the likelihood of a repeat attack as the primary reason for not seeking justice. In the words of one migrant woman, "there is just so much road ahead."⁶³ For some women, reporting is not perceived to be the best option if chances are high for a second or even third rape and there is a need to keep going. Such stories reveal the lack of agency that migrant women feel in Mexico, losing autonomy not only

⁶⁰ "Miren, hagan lo que quieran, pero por favor pónganse condones. Ahí hay unos en mi mochila, la rojita. Se lo recomiendo, porque tengo sida...Es que yo venía preparada, como dicen que siempre le pasa eso a una cuando viene migrando." Martínez 41-42

⁶¹ Martínez

⁶² International Organization for Migration conducted a study of 250 migrant sexual assault survivors in Mexico, finding that only 50 sought medical treatment or legal recourse.

⁶³ This quote comes from an interview published in "Los Migrantes Que No Importan" by Oscar Martínez.

over their bodies but understanding implicitly that social and legal structures in Mexico do not listen to voices such as theirs.⁶⁴

Indeed, the practice is not limited to La Arrocera and the mountains of Chiapas. In Baja California, hundreds of miles to the north on the border of California, Martínez reports that there exists a tree strung with the underwear of women who have fallen victim to sexual assault, their undergarments hung on its branches like trophies by assailants whose crimes have become normalized.⁶⁵ The tree stands as a symbol to migrants of the utter powerlessness they exercise over their lives and bodies in Mexico. This pervasiveness and normalization of sexual assault against migrants throughout Mexico demonstrates both the severity of their vulnerability and the weakness and failure of state institutions in addressing such abuses.

Although many migrants survive falling victim to violations of personal and bodily security in Mexico, others simply disappear without a trace. Families of the disappeared are left without closure, no body to bury and no way to know what happened to the person they loved, or if they even died in the first place. Some are kidnapped and put up for ransom, then killed if they cannot put together enough money to pay.⁶⁶ Others are trafficked. Many more simply die in the harsh conditions of the Mexican terrain: of dehydration, illness, exhaustion.⁶⁷

Enforced disappearance refers specifically to an intentional process, that the perpetrator hid the body. As with other abuses discussed in this chapter, precise calculations of the number

⁶⁴ According to Martínez, impunity in La Arrocera exists only for Central Americans. Many Mexican nationals report assault to local police forces, but migrants, particularly women, will oftentimes not have their cases heard. Although due in part to fears of deportation that discourage undocumented migrants from reporting assault, impunity is not experienced evenly in Chiapas, with Central Americans experiencing heightened vulnerability.

⁶⁵ Martínez

⁶⁶ Amnesty International describes the process of kidnapping for migrants and the extortion levied against them.

⁶⁷ Various NGOs publish reports on the dangers of the migrant journey along with the National Human Rights Commission. Castilla Juárez (2017) writes on the situation as well. These examples are adapted from her work and other such reports.

of disappeared are impossible, and we cannot always know which numbers refer specifically to migrants or to abuses in Mexico in general. No registry exists for them. The National Human Rights Commission (CNDH for its Spanish acronym) estimates anywhere between 50,000 and 500,000 individuals have disappeared in Mexico since its establishment.⁶⁸ The CNDH registers thousands of missing person reports a year in Mexico, but the actual number likely swells much higher, as individuals are unlikely to report due to fear of reprisals or a lack of trust in Mexican authorities.⁶⁹ Most of the victims these data reflect are Mexican nationals, but this demonstrates the prevalence of the practice.

In El Salvador, one mother describes the process of coming to terms with her son's disappearance in Mexico as so:

"Sometimes, I forget what I'm talking about...When they asked me if I knew anything about Charli, it was like someone was hitting me from the inside. I knew, I knew for a while...Two years, seven months, and ten days have passed. The bones, well, they would bring me a bit of peace, although nothing will bring me complete peace...When there's a heavy rain I imagine that his bones could go in a current and I'll never find them...Every time that I hear that there's a storm in Mexico, I think about that. It's a heavy anguish when I see that others are going to bring flowers to their loved ones, and I'll never see mine."⁷⁰

Stories such as this mother's abound. For every disappeared migrant, there are family and friends left behind who know nothing. As unidentified bodies pile up in the thousands in Mexican

⁶⁸ Citroni writes on the phenomenon of missing and disappeared migrants via the International Committee of the Red Cross.

⁶⁹ For information on the role of mistrust in authorities in human rights impunity, see Martinez.

⁷⁰ Martinez 313, translated by Blaine Finstein

agencies and cemeteries, there exists a network much greater of those impacted by their loss, some of whom might never recover or find themselves forever changed. Some families, unable to bear the silence and the not knowing, go to Mexico with signs of their loved ones, holding on to hope for a bit of information that might bring them peace. Throughout Mexico, caravans of mothers and grandmothers hold signs on buses or on street corners. In the middle of Mexico City, nestled by the entrance to Chapultepec Park alongside the bustling Reforma, there is a monument to dozens of disappeared migrants, their faces carved in metal beneath a placard that reads “*Where are our children?*” Such demonstrations hold testament to what has transpired, to the existence of the missing, and to a society unwilling to acknowledge its crimes. In the absence of governmental accountability, families of the disappeared continue to remember.

As the number of abuses and the number of the disappeared migrants increases, mass graves have been unearthed sporadically across migratory routes.⁷¹ In 2017, a mass grave was discovered in the state of Veracruz containing 250 skulls. In September of 2018, 168 more were found.⁷² Drone technology and other advancements are being utilized to help in the search, but in the meantime there are more mass graves waiting to be discovered across Mexico. Such sites reveal the geography of migration and death within the country and serve as proof of crimes committed.

Beyond abuses themselves, however, it is important to emphasize the role that socioeconomic status plays in migration through Mexico. Smuggler fees cost, on average, anywhere from US\$12,000 to \$15,000 to smuggle a migrant from the Northern Triangle past

⁷¹ Journalism has been particularly effective in chronicling the phenomenon of mass graves. These descriptions in particular come from The Washington Post describes.

⁷² O’Grady (2018)

internal border checkpoints in the United States,⁷³ with figures only rising under 2018 estimates.

⁷⁴ For migrants travelling with the aid of a smuggler, payment must be made regularly throughout the journey or risk what may come. In such circumstances, one continues to travel without the aid of a smuggler, gambling their lives on their ability to survive on their own and risking capture by state authorities who will deport them back to Central America. The reality for many, however, is being stuck within the bottleneck of southern or central Mexico, unable to move forward and unable to go back due to lack of funds.⁷⁵

Even capture by state authorities is an experience shaped by economic privilege for migrants in Mexico. Deportation is not a given, but rather a punishment inflicted on those who cannot afford to pay off state authorities. Rather than simply deporting every migrant who winds up in the hands of National Institute for Migration agents, these officials may offer release for set fee. Migrants may be captured multiple times but pay the fee and continue the journey with a dent in their funds.⁷⁶ In fact, the practice is so commonplace that by the time migrants make it to northern Mexico, authorities assume that they know the price already.⁷⁷

Another constraint on Central American migrants is a “tax” imposed by society itself. For undocumented Central Americans in Mexico, the experience of purchasing goods at a store can be shaped by nationality. Shopkeepers, drivers, and other Mexicans, knowing that migrants are desperate to reach the United States, upcharge for everything from water bottles to public

⁷³ Kulish (2018)

⁷⁴ Martinez (2017)

⁷⁵ Martinez describes this phenomenon to particular effect in his interviews at the Calipso strip club. Kulish (2018) chronicles it as well.

⁷⁶ UNHCR documents this practice as well, citing bribes as a means of escaping deportation.

⁷⁷ Kulish (2018) documents the case of a Honduran man migrating irregularly through Mexico. This is taken from his description of what occurred to him in the process of apprehension and detention in the North of Mexico. According to him, the practice is commonplace.

transportation.⁷⁸ Over time, these fees accrue, taxing the already limited resources of most migrants who are already vulnerable and insecure.

Specific instances of migrants being taken advantage of economically are rampant. In accompanying Central American migrants in their journey through Mexico in 2009, Oscar Martínez describes a strip club named Calipso in the southern state of Chiapas. Almost all of its workers are Central American women who began their migration in the hopes of reaching the United States before running out of money and ending up involved in sex work. Many of the women that Martínez interviews wind up at Calipso by force, their smugglers forcing them into survival sex or trafficking them as a means to pay back what they owe. The women, however, rarely earn enough to leave and spend their lives in Chiapas, forever in debt and working towards a dream that will never be realized.⁷⁹

This epitomizes the migration-socioeconomic status nexus in Mexico. The most vulnerable migrants, those who lack even enough money or familial support to pay for a smuggler, face the brunt of the insecurity and are left in positions of heightened vulnerability during their migration. Some choose to continue on despite the dangers, braving the Mexican terrain without the knowledge of a smuggler to ensure they do not wind up an unnamed body sprawled across the desert. Others are forced to abandon their dreams of reaching the United States and spend their lives trapped within Mexico, living undocumented in conditions of poverty. Others return home, either by choice or deportation, to the same insecurity that drove

⁷⁸ Kulish (2018)

⁷⁹ Martínez (2009) interviews migrant women at the Calipso who describe the role that limited funds played in keeping them at the club, rather than continuing their migration. His interviews describe how this lack of resources restricts migration more generally, not just at the Calipso. His work epitomizes the relationship between socioeconomic status and insecurity in demonstrating how those with fewer financial resources have limited access to smugglers, safety, and continuing north.

them out in the first place. Some choose to try again at the behemoth of Mexico. Others do not and live. Others do not and die. For migrants, everything is a gamble.

The Right to Due Process

The second key category of rights for migrants in Mexico is the right to due process. While abuses of security threaten migrants' lives and health, abuses of due process limit their ability to access legal protections and restrict their rights in comparison to Mexican nationals. Whereas security risks are perpetrated by a number of actors, both state and non-state, due process violations are primarily the result of Mexican governmental institutions. As such, they constitute an important and concrete area in which Mexican policy can be reformed without grappling with the broader institutional issues that shape migrant security. This section discusses how migration is affected by due process violations, from apprehension, to case processing and detention, to impunity.

Due process for migrants is complicated by Mexico's bureaucratic structure. In Mexico, rather than a single government agency tasked with all apprehensions and detentions, cases from undocumented migrants are handled by three systems. Adults are detained by the National Institute of Migration (Instituto Nacional de Migración, INM), whereas unaccompanied minors are screened for protection needs and handed over to the National System for Integral Family Development (Sistema Nacional para el Desarrollo Integral de la Familia, DIF).⁸⁰ Per law, any migrant that requests asylum must have their application forwarded to the Mexican Commission for Refugee Assistance (Comisión Mexicana de Ayuda a Refugiados, COMAR). Asylum seekers who request asylum through COMAR before apprehension are not detained while their

⁸⁰ This system is outlined in the 2011 Law of Migration. For a comprehensive description of its functioning, see Human Rights Watch's 2016 report "Closed Doors" which explains the intricacies of the bureaucracies that handles irregular migration and asylum in Mexico.

applications are processed, whereas undocumented migrants who ask for asylum after apprehension are detained until a decision has been made regarding their migration status.⁸¹

Issues arise in the execution of laws across these units. According to the United Nations High Commissioner for Refugees (UNHCR) office for Central America, Mexico, and Cuba, “the biggest problem in Mexico is not the [asylum] procedure itself, but access to the procedure.”⁸² Rather than operating as well-structured bureaucracies with uniform regulations, there is a breakdown in communication and policy implementation that has resulted in misinformation, poor training of state officials, and ultimately, the failure to secure migrants’ legal rights while in state custody.

In 2016, Human Rights Watch released a report on due process for unaccompanied Central American minors in Mexico. Field work from across detention centers, INM and DIF offices, and albergues revealed reports of widespread mistreatment and misinformation.⁸³ Migrants are frequently misinformed of their rights, and many are not told that they are able to seek refugee status. This problem is compounded for unaccompanied minors who must be informed of their rights and have their cases processed in ways that take into account their age and its associated vulnerabilities.

The data is grim. Of the 62 child migrants interviewed by Human Rights Watch, only one had spoken with a child protection officer while in INM custody to evaluate protection needs and the potential for referral to the DIF.⁸⁴ As such, few children end up filing claims for asylum for

⁸¹ Provisions for the detention of such migrants are laid out in the 2011 Law of Migration. Human Rights Watch (2016) documents the practice.

⁸² This UNHCR quote is taken from Human Rights Watch (2016).

⁸³ Fieldwork done in Mexico, including interviews with officials from COMAR, the DIF, and the INM along with unaccompanied migrant children from Central America documents this.

⁸⁴ Only one of the 62 child migrants interviewed by Human Rights Watch (2016) said that they were informed by the INM of their right to apply for asylum.

which they might have grounds. In 2014, Mexico granted asylum to only 25 unaccompanied or separated children, representing only .3% of the INM's total apprehensions of child migrants that year, that number rising to a mere 52 in 2015.⁸⁵ Numbers have risen in recent years, with 1% of apprehended child migrants receiving protection in 2017⁸⁶ and 7% of applications resulting in refugee status in 2018,⁸⁷ but the number continues to fall much below the total estimated need. UNHCR calculates the number of child migrants in Mexican custody qualifying for protection under refugee status or asylum to be about half of the total apprehended.⁸⁸

Furthermore, even when migrants are informed of the right to seek refugee status, they are often told that choosing to apply for it will result in increased stays in detention or that their applications will not be successful. Immigration officials frequently fail to ask more than a cursory set of questions in refugee status interviews, then deport potential asylees for failure to demonstrate grounds for protection. The misinformation and poor policy implementation prevalent throughout the migration processing or refugee status processes represent a significant barrier to due process and does an injustice to migrants in Mexico, ensuring that many fall between the cracks.

After apprehension, migrants move on to detention.⁸⁹ Although the detention experience is individual and varies, reports exist of migrants being kept in detention centers for as long as a year while waiting for their refugee status cases to be processed.⁹⁰ For reference, Mexican law

⁸⁵ Human Rights Watch (2016)

⁸⁶ Human Rights Watch World Report 2019: Mexico

⁸⁷ This data comes directly from Mexico's Refugee Commission (COMAR). Out of 17,116 applications, 1,327 resulted in refugee status.

⁸⁸ UNHCR via Human Rights Watch

⁸⁹ As mentioned previously, not all migrants are detained while their cases are processed. Those who apply directly with COMAR and unaccompanied children whose cases have been moved to the DIF are not held in detention and are therefore not covered within this discussion.

⁹⁰ Human Rights Watch (2016) documents this phenomenon.

outlines a maximal detention stay of 15 days, except under particular circumstances resulting in no more than 60 days total in custody.⁹¹ This is in stark contrast to the reality of detention for apprehended undocumented migrants who face protracted stays. There has been significant improvement in detention length since 2016, particularly in southern Mexico which faces greater Central American migration flows. The average length of detention has fallen to a week as of early 2018,⁹² but migrants continue to face issues beyond the length of detention, particularly in the north.

In addition, conditions in which migrants are kept frequently fail to comply with law.⁹³ Cases have surfaced of detention centers starving migrants as a means of discouraging asylum applications and deportation back to Central America.⁹⁴ The INM Citizen Council released a report in 2017 of detention conditions in Mexico based on interview data, citing numerous abuses throughout the process of apprehension, detention, migratory or refugee status case processing, and deportation. INM officials used physical force to encourage deportation,⁹⁵ none of the migrants interviewed had knowledge of how to lodge a complaint of abuse,⁹⁶ none were informed of their right to legal representation or means of regularization.⁹⁷ While in detention,

⁹¹ The 2011 Law of Migration outlines 15 work days as the maximum stay in detention, except in cases in which documentation is difficult to obtain due to communication issues with foreign governments. Detention should never, however, exceed 60 days per Mexican law.

⁹² The Mexico Security Initiative at the Strauss Center found that detention stays average a week in Mexico. Refugee status processing, however, continues to lengthen the stay significantly.

⁹³ Current information on detention practices is difficult to obtain. Mexico is not often open with researchers about the conditions of its detention facilities. Human Rights Watch (2016) offers a look into Mexican detention, although conditions change frequently. As such, there is likely a difference in the conditions they describe versus the state of detention today. For a look at detention in 2008, before the 2011 Law of Migration, see the Migration Policy Institute (2008).

⁹⁴ Human Rights Watch (2016) documents this.

⁹⁵ Finding 23 of the Executive Summary says that “cases were registered of the use of force to obligate individuals to accept orders of deportation.” Translated by Blaine Finstein.

⁹⁶ Finding 29 says that “none of those interviewed knew how to file a complaint [against INM].” Translated by Blaine Finstein.

⁹⁷ Findings 51 and 52 say that “those interviewed were not informed of their right to legal defense...[or] their options for regularization.” Translated by Blaine Finstein.

No detention center provided separate accommodations for LGBT individuals or families, many lacked beds, and solitary confinement was frequently used as a means of “providing safety” for vulnerable individuals (notably LGBT detainees), a violation of international law.⁹⁸ Such abuses constitute significant violations of due process that must be addressed in ensuring the full enjoyment of human rights throughout the entirety of a migrant’s journey.

In addition to failures within Mexico’s immigration agencies to implement policy effectively, impunity for perpetrators looms as a fundamental structural issue blocking migrants’ access to due process. Although Mexican law provides equal protection for all migrants regardless of regular or irregular status,⁹⁹ judicial institutions in the country rarely guarantee its application. Exemplified by the case of sexual assault of migrant women in Chiapas, municipal police frequently dismiss the minority of cases that are reported by Central Americans.¹⁰⁰ Prejudice against Central Americans in Mexico, particularly migrants, leads their cases to stall with minimal investigation. In contrast to the numbers of security violations estimated to occur in the journey through Mexico, the National Human Rights Commission has received only 5,294 reports of such crimes since its creation.¹⁰¹

In summary, due process violations are common elements of the migrant experience in Mexico, shaping both personal security in the form of impunity and interactions with the state. In the latter, there is a breakdown as law is translated to policy, stopping migrants, particularly unaccompanied children and refugees, from accessing their human rights. Mexico must grapple with these issues should it wish to ensure the fair treatment of migrants in its custody and

⁹⁸ The INM Citizen Council (2017) documents these abuses.

⁹⁹ Articles 12 and 13 of the 2011 Law of Migration state this.

¹⁰⁰ The Washington Office on Latin America (2017) documents this.

¹⁰¹ Washington Office on Latin America (2017)

provide judicial recourse for crimes committed against them in order to reduce the prevalence of violence and insecurity for migrants.

Refugee and Asylum Rights

In addition to the rights to security and due process, the third and final protection gap is refugee and asylum rights. It is important to note that in contrast to the earlier two categories of rights that pertain to all migrants indiscriminately, refugee and asylum rights apply only to a particular subset of migrants. As such, defining the boundaries that divide migrants along these categories is important in understanding to whom this analysis applies and for what reasons.

As described earlier in my discussion, separate legal structures exist to address the concerns of refugees and forced migrants following the Second World War.¹⁰² Europe was faced with millions of migrants travelling in various ways over the continent in response to crisis and changing borders. The United Nations and the newly designed international institutional structure it heads sought to develop policy that could handle such a crisis and any others that might arise in the future.¹⁰³

The definition of the refugee developed in response to this particular context. As opposed to migrants, which encompasses all individuals who have crossed an international border,¹⁰⁴ refugees are migrants who were forced to flee due to a well-founded fear of persecution.¹⁰⁵ The

¹⁰² The introductory note of the 1951 Refugee Convention by Antonio Guterres, the 10th High Commissioner for Refugees of the United Nations, discusses the origins of the Convention. Gatrell and Price, M. E. (2006) discuss this as well, paying particular attention to the historical factors that shaped the emergence of the Convention.

¹⁰³ Gatrell (2013)

¹⁰⁴ The definition of a migrant varies. My discussion draws on the legal definition pertaining to Mexican law given in Article 3 of the Law of Migration (2011), which defines such an individual as “someone who leaves, transits through, or arrives to the territory of a state distinct from that of their residence for any motivation.” Translated by Blaine Finstein.

¹⁰⁵ Article 1 of the UN Convention Relating to the Status of Refugees (1951) defines a refugee as someone who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out-side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

1951 Refugee Convention parses this definition into five categories of persecution, on the basis of: race, religion, nationality, membership to a particular social group, and political opinion.¹⁰⁶

Migration scholars such as Peter Gatrell and Andrew Shacknove note the restrictions inherent in such a narrow definition of persecution and refugeehood more generally, developing a broader term that applies to migrants who flee under similar conditions of duress not covered by the convention: forced migrants. Forced migration is not mentioned in Mexican law but offers an important distinction that recognizes the diversity of push factors that can force an individual to leave their country of residence in search of international protection. The term is particularly apt in the North American context, in which migrants flee for a variety of reasons: gang violence and recruitment, hunger and abject poverty, gender and sexual violence. Not all of these reasons make the migrant a refugee, but all force a migrant out in search of a home that allows them the enjoyment of their full human rights. As such, I incorporate the term in my discussion.

North America does not have a uniform system of handling refugee protections and it is important to clarify the differences before moving further. Asylum, although rooted in definitions of refugeehood, is a particular instantiation of refugee protections. Asylum seekers arrive at or within a foreign state and then ask for legal protection. Each state defines the bounds of asylum for itself with respect to who and how many may receive it. In the context of Mexico, however, asylum is referred to as “refugee status.”

Globally, as soon as a migrant crosses an international border due to a well-founded fear of persecution,¹⁰⁷ they are a refugee. International refugee protections are grounded in the principle of non-refoulement. Non-refoulement, outlined in the introductory note of the 1951

¹⁰⁶ Article 1 of the 1951 Convention Relating to the Status of Refugees

¹⁰⁷ Again, the legal definition of persecution applies only to particular groups of people and not all forced migrants. As such, it does not apply to all Central American migrants in Mexico.

Convention on the Status of refugees as one of its guiding principles, prevents a state from returning a refugee to a condition in which they can experience persecution like that which drove them to flee in the first place.¹⁰⁸

These protections, however, have not been upheld in Mexico. Requirements within the international and domestic law outline refugee rights in Mexico, from detention, to information regarding their rights, to protection from non-refoulement, among others. In the remainder of this section, I elaborate what rights in particular are not upheld and explore why that is the case via “securitization” policy.

As mentioned in my discussion of due process, detention conditions during the processing of refugee status claims frequently fail to comply with law. Requirements within the 2011 Law of Migration and Law of Refugees, Complementary Protection, and Political Asylum outline requirements for the maximum length of time in detention and conditions for legal deportation. However, amidst case backlog, asylum applications continue to rise, clogging resource-strained immigration courts and protracting detention stays well beyond the 60-day maximum.¹⁰⁹

Underfunding intensifies this problem. From 2013 to 2017, COMAR received no increase in funding despite vast increases in the number of asylum applications received. As of 2017, there were only 15 full-time officials within the agency capable of making refugee status

¹⁰⁸ For a comprehensive discussion of the principle of non-refoulement, see the International Committee of the Red Cross (2018).

¹⁰⁹ The Government of Mexico documents yearly statistics on the status of asylum applications. Data are broken down by nationality and include the number of successful, unsuccessful, and incomplete cases. The data note a sharp increase in the number of pending applications since 2014, coinciding with the uptake in migration from Central America. This is evidence of the case backlog in the Mexican asylum system.

determinations.¹¹⁰ Such inadequacies ensure that COMAR is incapable of processing even the comparatively minimal cases that are filed for asylum in a manner compliant with refugee law.

As case backlog increases in Mexico, many refugees with legal claims to protection agree to be deported back to Central America rather than wait out what might amount to months of detention while their cases are processed, violating non-refoulement and resulting in many migrants with valid claims to refugee status not receiving it. As such, Mexico's policy of deportation in the absence of due process marks a particularly sharp protection gap for its refugees.

The “Securitization” Phenomenon

As opposed to a forced migration crisis, modern migration from Central America has predominantly been treated as a security concern for the United States and Mexico. Although international refugee and human rights law is grounded in the principle of human security, Mexico and the United States use national security as justification for the failure to provide protection. I refer to this phenomenon as “securitization” and demonstrate in this section the impact it has had in Mexico to the detriment of migrant security. I argue that although Mexico has its own anti-immigration interests, it functions as a proxy for the United States in minimizing the number of migrants who reach its southern border.

¹¹⁰ The Mexico Security Initiative of the Strauss Center for International Security and Law published a report in 2018 from which this data is taken, titled “The Impact of Securitization on Central American Migrants.”

Historically, migration policy has been used by the United States as an extension of national security policy. Throughout the Cold War, refugees from communist states such as Cuba and Indochina were granted asylum at higher rates. In contrast, Central American migrants, even then, were faced with tightly controlled borders and strict oversight of them, complicating their decisions to move further.¹¹¹ Instead of offer protection, the intention of refugee policy was to destabilize communist states and further the spread of democracy.¹¹² The refugees themselves were secondary to their utility in realizing foreign policy goals. This is in contrast to a humanitarian approach to handling refugee crises that preferences assistance and protection indiscriminately.¹¹³

The majority of the world is no longer teetering on the edge of communism, yet bias remains in the selection of particular nationalities to allow in disproportionately. Migration policy continues to play out in North America as an extension of national security. Today, migration is entangled in security issues like the domestic drug trade, gang violence, and instability.¹¹⁴ As such, Central American forced migrants are seen to personify these policy concerns. Rather than being understood as individual victims of persecution fleeing across international borders to seek protection, Central American forced migrants are stigmatized as a group, labelled a security threat, and accordingly denied access to most protections.¹¹⁵

Mexico, caught beneath the political pressure of its northern neighbor alongside its own anti-immigrant sentiments, operates in part as a tool for U.S. security interests that seek to minimize the number of migrants who make it to the U.S./Mexico border. Mexico's Southern

¹¹¹ Keely 311-12

¹¹² Keely 307

¹¹³ Keely 307-8

¹¹⁴ Council on Foreign Relations 2018

¹¹⁵ Council on Foreign Relations 2018

Border Plan, initiated in 2014, placed militarization and deportation at the forefront of the country's migration strategy along the Chiapas/Guatemala border, mimicking the function of the U.S./Mexico border as a filter keeping migrants out even before they reach U.S. soil.¹¹⁶ Before the election of Mexico's newest president in July of 2018, Andrés Manuel López Obrador, his proposed migration policy was relatively liberal, placing migration and human rights concerns at the forefront and including temporary work visas to Central Americans within its proposals. Shortly after his election, however, talk of such policies ceased. Similarly, the United States goes so far as to lobby the governments of Central America to implement migration policy that favors its security interests. These political pressures demonstrate the role of securitization in shaping migration policy and work in tandem to ensure that forced migrants rarely find the protections they seek in Mexico.

¹¹⁶ Vega (2017) and Isacson, Meyer, and Smith (2017) write on the securitization of the southern border and U.S. influence in security policy. They draw links between pressure from the United States and the policies that constitute the Southern Border Program, with increases in apprehensions and deportations, in particular.

Concluding Remarks

Central American migrants are subject to many abuses while they journey through Mexico, including violations of their rights to security, due process, and refugee protections. Amidst kidnapping, enforced disappearance, assault, extortion, and protection gaps while in state custody, it is clear that the legal provisions for migrants are not being upheld in Mexico. These abuses are exacerbated by corruption, underfunding, poor policy implementation on behalf of the INM, and securitization. Economic pressures and policy failures often end in deportation.

Although many migrants see Mexico as merely a stepping stone to the United States and do not wish to stay, the vast protection gaps that they experience within it are a stark denial of their human rights. Policy must move away from securitization and treat migration from Central America as what it is: a crisis of forced migration with human rights law that must be applied.

Chapter 4 - For every country I lose I make another Policy

As discussed in the previous chapters, migrants face a crisis of human rights within Mexico. What remains to be discussed, however, is how the state might grapple with these issues. Throughout the course of this chapter, I address these questions by raising policy options to combat violations of security, due process, and refugee and asylum rights. In addition, I offer arguments for their implementation in comparison to securitization. I end by outlining a vision for how human rights policy can work in tandem with state interests and benefit more than just migrants, but Mexico as a whole.

It is important to note that I do not offer solutions to all of the human rights issues that migrants face in Mexico. As demonstrated, these issues are widespread and deeply rooted in both governmental and social institutions. Various reasons exist for both why and how migrants' human rights are violated in Mexico, and the interplay between them makes using policy to target or affect a single issue almost impossible. This tangled knot of rights violations and institutional failings means that while I cannot address all of them within the scope of this work, my analysis will bear in mind existing linkages between them. Furthermore, it is impossible to reduce the rate of occurrence of human rights abuses to zero. I do not labor under the delusion that policy can entirely counteract every rights violation that could occur against a migrant in Mexico.

That being said, substantive policy options exist that the Mexican government can and should implement that have the potential to improve the human rights situation for migrants. I

begin by advocating for a non-traditional regularization of migration via the end of detention practices. Afterwards, I address the need for budgetary increases and judicial reform that would work in tandem with migration regularization to ensure that migrants' rights to security, due process, and refugee protections are upheld. Finally, I move into a discussion of how human rights policy might be mutually beneficial for both migrants and the state, in contrast to securitization.

Regularizing Migration: Dropping Detention

As outlined in the previous chapter, security issues constitute many of the abuses that migrants face while journeying through Mexico. To reiterate core issues of migrant security, the majority of the risk is inherent in the routes that migrants are forced onto. Undocumented migrants in Mexico must avoid state detection and thereby move through unsafe channels that incur large security risks. Murder, assault, torture, and kidnapping are all heightened significantly under irregular migration resulting in large numbers of abuses that go largely unreported or unprosecuted. Under the protection of a reputable smuggler, much of this is avoided, but large protection gaps remain, particularly for the most vulnerable migrants who lack the capital to purchase such services. The key in addressing human rights and personal security, then, is to regularize migration through Mexico.

To regularize migration is to make migration legal rather than illegal. Presently, the majority of migrants in Mexico traverse the country undocumented, but as individuals with a

lawful presence in Mexico, they would be able to move through the country quickly along safe routes that do not require a smuggler. This would allow migrants to make it from the border in Chiapas to the United States in a matter of days. Migration through the country could be as simple as taking a bus.

Such a policy would address nearly every aspect of insecurity in the journey through Mexico, minimizing the risk of commonplace abuses without having to address broader structural issues of organized crime, drug smuggling operations, and corruption that heighten them. As such, the regularization of migration is a way to address migrant security that works particularly well in the context of Mexico, where structural issues are deeply rooted to the extent that they have proven nearly impossible to reform.¹¹⁷ This turns the black market of migrant and drug smuggling operations on its head, uprooting the operations of organized crime networks and weakening the links that tether corruption to Mexican governance.

However, regularizing migration is not as simple as changing the migration law. Domestic institutions and Mexican society are not always friendly towards Central Americans, with prejudice acting as friction against migration and free movement.¹¹⁸ Citizens are likely to respond negatively to open borders that allow an influx of migrants who would be seen as an unwelcome resource drain on an already taxed society. Similarly, the United States is not apt to respond favorably to these migration policies. As discussed previously, the United States government exerts diplomatic pressure on Mexico and Central America to implement securitization policy that discourages immigrants from reaching its southern border. This includes providing some funding for Mexico's 2014 Southern Border Program, which centered

¹¹⁷ I make this claim on the basis of the prevalence of structural issues such as corruption, organized crime, and impunity. This has been documented earlier in the paper and is reflected in much of the scholarship that I cite.

¹¹⁸ For a look at the racial and ethnic tension between migrants and police, see Martinez.

around increased apprehensions to catch undocumented migrants before they made it farther north.¹¹⁹ The United States is likely to discontinue to allocate funds to such programs should Mexico regularize migration, burdening Mexico with economic costs and potential reductions in the aid upon which it relies.

How, then, might Mexico offer legal migration for the sake of the well-being of migrants while avoiding the unwanted consequences of international diplomatic sanctions and social unrest? Programs that attempt these goals have been proposed, notably by president Andrés Manuel López Obrador in his policy propositions for MORENA, the party he both founded and leads, in a plan to offer temporary work visas to Central Americans.¹²⁰ Unfortunately, such policy has yet to come fruition in the initial months of his presidency and administration has begun to limit talks of temporary work visas to the southern border states. However, migration regularization remains within the realm of possibility as a way to offer both protection to those who wish to remain in Mexico and a legal means of traversing the country legally for those who are set to migrate to the United States regardless.

There exist other ways to allow for regular migration through Mexico beyond temporary work visas. I argue that Mexico should do so by abolishing the practice of detention for migrants who apply for refugee status. This would serve the dual purpose of offering a means of regular migration through the country while ending abuses associated with the detention process.

¹¹⁹ Vega (2017) and Isacson, Meyer, and Smith (2017) write on the securitization of the southern border and U.S. influence in security policy. They draw links between pressure from the United States and the policies that constitute the Southern Border Program, with increases in apprehensions and deportations, in particular.

¹²⁰ See “MORENA’s National Project: 2018-2024” for a comprehensive description of policy proposals the party supported before Lopez Obrador took office. Temporary work visas for Central Americans are included, along with a number of other progressive migration policies that seek to center the crisis.

Furthermore, I argue that abolishing detention is diplomatically feasible on the grounds of human rights.

Detention serves the primarily to prevent migrants from living undocumented without successfully completing refugee status procedure that verifies their protection needs. Detention, then, ensures that those who do not qualify cannot remain and are within state custody for ease of deportation should their application be denied. In the case of Mexico, however, the majority of undocumented migrants seek to continue their migration to the United States. Detention primarily serves U.S. security rather than domestic interests, catching migrants in Mexico and preventing their migration as early as possible. Should detention be abolished within Mexico, or at least limited to minimal cases, some migrants would use the opportunity as a means for continuing north. However, as refugee status seekers with lawful presence, these migrants would be able to move without restriction in Mexico and could make it to the United States quickly and safely. They would not be forced to move under conditions of insecurity that plague irregular migration and incur the majority of the risk.

Under present policy, not all refugee status seekers are detained while their case is processed. Refugee status seekers who go directly to COMAR are allowed free movement,¹²¹ whereas those who seek refugee status after being apprehended by INM are kept in detention. The latter represent the majority of those who migrate through Mexico in the hopes of reaching the United States and thereby the population most susceptible to violations of their human rights. Despite many being refugees with legal claims to protection, their desire to continue on to the

¹²¹ COMAR requires that such applicants visit their offices weekly, which is indeed a restriction on movement. Some refugee status seekers who apply above Mexico City (where the northernmost COMAR office is) are required to stay within the state in which they applied.

United States forces them into insecurity in Mexico that heightens their risk of human rights abuse.

Furthermore, as evidenced by my discussion of the right to due process, detention is associated with a number of human rights abuses. Per human rights law, detention must not be protracted and migrants are allowed access to minimum conditions. Under conditions of underfunding and case backlog, these rights are difficult to ensure. Eliminating the practice of detention would avoid such abuses while cutting costs.

I argue that ending the practice of detention is a way to offer a legal pathway to migration through Mexico in a manner that is both diplomatically advantageous for Mexico and serves dual human rights goals of due process and security. In terms of diplomacy, ending detention for refugee status seekers is not a measure that overtly regularizes migration to the U.S. border. Even if the United States reacts poorly, it is keeping in line with Mexico's human rights goals. As such, ending detention offers Mexico a means of improving the human rights situation for its migrants in a way that minimizes political consequences while lessening the drain on its resources.

Refugee Status Reform and Funding Increases

Ending the practice of detention for apprehended refugee status seekers in isolation would not function as a means of migration regularization through Mexico if the majority of those apprehended cannot access refugee status procedures. As demonstrated by the work of

Human Rights Watch and the INM Citizen Council in evaluating the Mexican apprehension and detention system, refugee status itself is not the issue, but rather the lack of access to it. Few migrants receive refugee status, with state officials misinforming them of their legal rights and refugee status interviews failing to capture the extent of their protection needs. This is exacerbated for unaccompanied minors who constitute a significant portion of those passing through Mexico due to reasons such as being targeted for gang recruitment in Central America or sexual and gender-based violence.¹²²

In light of these concerns, Mexico should expand refugee processing programs to screen migrants effectively for protection needs, addressing the right to refugee status procedure. Mexico should do this by implementing policy that reforms the refugee status process via superior training of INM officials that handle initial protection screening and superior training of COMAR officials who conduct interviews for refugee status. Migrants must be informed of their rights, provided translation services in their native language, and allowed a refugee status interview that is sufficient to gauge their needs.¹²³ Unaccompanied child migrants must be treated in a manner compliant with the 2011 Law of Migration that recognizes their unique needs. These measures would end the system of closed doors that prevents migrants from accessing the international protection guaranteed to them and ensure that all those with valid claims to protection receive it.

¹²² The INM cites that 80,000 unaccompanied minors were apprehended in Mexico from 2009 to 2018, though the number likely swells higher than official data.

¹²³ According to the Mexico Security Initiative of the Strauss Center for International Security and Law, translation services are generally provided only in English and French. Many Central American migrants, particularly from Guatemala, speak indigenous languages. Language serves as a barrier in their interactions with INM and COMAR officials, with migrants frequently translating for other migrants. The Mexico Security Initiative also found that refugee status interviews were frequently conducted briefly over the phone.

These issues compound amidst underfunding of COMAR and poor training of INM officials to result in few migrants receiving the protection they need. As discussed pertaining to refugee and asylum rights, COMAR has received negligible funding increases since 2012 despite vast increases in refugee status applications.¹²⁴ This has left many refugee status cases in limbo for up to a year without an answer. If refugee status is to be accessible in Mexico, funding must be allocated to COMAR that corresponds to its workload and recognizes the resource strain of processing exponentially increasing refugee status claims.

Taken together, these policies would make existing protections accessible to refugees in Mexico. Superior training of INM and COMAR officials would identify those with protection needs and ensure that refugees have access to refugee status procedure, while funding increases would provide the necessary resources for COMAR to process applications in the time required by law.¹²⁵

Judicial Reform

I advocate for the reform of the human rights judicial system to begin to tackle structural impunity. The design of the judicial institutions that preside over cases of human rights abuse in

¹²⁴ According to COMAR, 2,137 applications for refugee status were filed in 2014. This number jumped to 14,596 in 2017 and just below 30,000 in 2018. The number of refugee status applications is expected to rise to well over 40,000 for 2019 based on trends from the initial months of 2019 as well as reports by Mexico Security Initiative of the Strauss Center for International Security and Law.

¹²⁵ As mentioned previously, the 2011 Law of Migration specifies that detention should not exceed 15 business days. 60 business days are allowed in cases that require information from foreign embassies that is difficult to obtain. According to the Mexico Security Initiative of the Strauss Center for International Security and Law, the average length of detention was at 6-7 days as of 2018, but in the case of refugee status, applicants might find themselves in detention for months or even a year.

Mexico contributes to the impunity that fuels both insecurity in migration and the failure to provide legal recourse for such crimes. Although embedded in networks of corruption that link organized crime to the state, I argue that impunity can be addressed by extensive judicial reform that preferences the punitive and prosecutorial power of human rights on a federal level.

Impunity for crimes committed against migrants has its roots in the way in which human rights is structured judicially in Mexico. Human rights complaints are separate from legal cases and not seen within the Mexican court system, instead given as “claims” to the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH). The CNDH, however, lacks the power to enforce punitive measures on the perpetrators of abuses.¹²⁶ Instead, after receiving evidence, it meets as a committee and makes a determination on whether or not an abuse occurred. If so, “recommendations” are offered that outline what it deems fit as recourse and recompense.

The process is arduous. Claimants must prove that an abuse occurred, bringing trauma to the surface, often under conditions of minimal legal resources to develop a case. Should a claim be successful and the CNDH determine that an abuse did indeed occur, there is no measure that ensures its recommendations are followed. Successful claims frequently stall for decades with minimal or no recommendations implemented.¹²⁷

This constitutes a significant disincentive for reporting and implies that Mexico does not care about human rights, or at least not enough to give them the power to be enforced. Rights are only as powerful as their capacity to be guaranteed, which relies upon judicial structures to

¹²⁶ The Mexican Commission for Defense and Promotion of Human Rights (2018) describes the impunity of human rights violations in Mexico.

¹²⁷ The research of the Mexican Commission for Defense and Promotion of Human Rights documents this. Data on the status of CNDH claims, including the extent to which their recommendations have been followed in subsequent case reports, is also available on the website of the National Human Rights Commission.

criminalize them. Without judicial measures to grant credence to human rights, they flounder in a state of semi-existence, somewhat there and somewhat not, *están pero no están*.

If Mexico is to improve the human rights record for migrants, it must integrate the CNDH within the rest of the legal architecture. Rather than existing as a committee outside of the judicial system, complaints should be filed as cases. Rather than recommendations, verdicts should be given that result in punitive measures should the crime be deemed to have occurred. Perpetrators should receive appropriate sentencing that mirrors what they would receive in a state level court rather than a reprimand.

Additionally, language should be standardized between human rights courts and other domestic courts. Although a seemingly minor distinction, incorporating lighter language that lessens the psychological impact makes human rights abuses seem as though they are not crimes. Language should encourage equality before the law and give the impression that human rights abuses will be taken seriously and that their cases will carry judicial weight.

That being said, the CNDH only presides over cases on a federal level. Human rights abuses are predominantly reported to state or local fiscalías. As such, granting prosecutorial authority to the CNDH and restructuring it as a court would only provide accountability for crimes committed by state authorities. Reforms of the CNDH are a necessary start but would not address the entirety of structural impunity for human rights abuses in Mexico. Furthermore, one of the key barriers that prevents human rights cases from being reported to state fiscalías is the fear of retaliation from perpetrators. Mistrust of authorities only intensifies these concerns as abuses themselves have been committed by state authorities. I recognize this as a gap in my

recommendations that must be addressed if structural impunity is to be weakened and accountability provided for all abuses that migrants face.

Migration and the State: Mutual Benefits and the Myth of “Securitization”

Migrant rights policy does not solely benefit migrants themselves. I argue that human rights policy can be implemented in ways that benefit the security and economic agendas of the state. As security and impunity improve for migrants, they also do for Mexican citizens. More generally, as the institutional factors that heighten insecurity for migrants are weakened, so they are for Mexico itself. Furthermore, refugee integration has the capacity to be an economic force for Mexico. As such, the policy options I outline are more than humanitarian, but a vision for how human rights for migrants might work in the benefit of the state and society.

Human rights-oriented policy for migrants should be utilized as a means by which to address Mexico’s structural issues. Compliance with human rights law need not be a sacrifice that the state must make for the purposes of protecting non-citizens; it is a necessary measure for its own security, both at the level of the state in combating organized crime and at the level of the individual in improving personal security and the capacity to seek recourse for abuses that are committed.

The regularization of migration offers benefits beyond human rights protections. As migrant smuggling operations are enmeshed in drug trafficking with organized criminal groups

in ultimate control of movement over the country, removing migrants from their control would implicitly reduce their power within Mexico. Migrant smuggling provides significant profits for organized criminal groups, with estimates of its worth at \$7.4 billion in 2018 according to the United Nations Office on Drugs and Crime.¹²⁸ Eliminating this income source would be a significant cost to illicit markets and would reduce their power accordingly

I argue that Mexico need not decide between preferencing either human rights or its internal security concerns as policy discussions have been framed in the context of migration from Central America. The two can be addressed in tandem. The regularization of migration exemplifies this dynamic, with improvements in migrant security weakening organized criminal groups and thereby bringing stability to Mexico. Because so many of the issues that afflict migrants are the same as those that cause domestic insecurity, minimizing their influence on migrants ensures improvements for Mexico as a whole.

With respect to judicial reform, discouraging the impunity that afflicts cases of rights violations against migrants would reduce impunity more generally. Reforms within the CNDH do not solely benefit migrants, but the entirety of Mexican society. Human rights abuses are perpetrated in Mexico against many more victims than just migrants. Mexicans themselves who have suffered crimes of kidnapping, torture, enforced disappearance, and assassination number in the hundreds of thousands,¹²⁹ yet justice is similarly infrequent. Victims of crimes perpetrated by Mexican authorities must work through the same legal system via the CNDH and face similarly

¹²⁸ The United Nations Office on Drugs and Crime (UNODC) publishes a yearly report on the state of human smuggling from which this data is taken. It cites the average cost of smuggling from Central America via land route to be \$4,000 to \$15,000 and the cost from Mexico to be an average of \$5,000. The estimate includes all smuggling over the U.S./Mexico border in the year 2018.

¹²⁹ The Mexican Commission for Defense and Promotion of Human Rights documents these data in a number of reports on extrajudicial killing, torture, enforced disappearance, and impunity. Data comes from state fiscalias and the National Human Rights Commission.

bleak prospects for their case being taken seriously and resulting in significant punitive action.

As such, reforms of the human rights system are necessary not only for migrants, but for Mexico more generally. Furthermore, they represent another way in which policy addressing the concerns of migrants can work together with domestic interests.

Additionally, integration programs that encourage migrants' labor force participation in Mexico offer yet greater mutual benefits between migrants and the state. Although rhetoric often represents migrants as a disruptive force with the capacity to upend society¹³⁰--and indeed migration inflows often correlate with social unrest¹³¹--their entry into and protection within foreign states need not cause unrest. Migrants and refugees are not powerless beings who can receive only protection and contribute nothing. Each arrives with individual skills and workforce capabilities that have the power to improve the economy and society of a host country should integration be facilitated smoothly and effectively.

As such, I advocate for expanded integration programs that work to welcome refugee status seekers into Mexican society while filling holes in the Mexican labor force via work programs that allow them to enter into relationships of mutual benefit with the state. Integration programs already exist for returned migrants from the United States, offering social services that address the concerns of a population distanced from Mexican society while recognizing their economic potential.¹³² Mexico's return migration policy matches return migrants and deportees

¹³⁰ See: Trump's 2018 and 2019 State of the Union addresses with discussion of migrants of Latin American origin as criminals who bring gang violence and further insecurity in the country

¹³¹ Huysmans and Squire (2009) write on the link between migration flows and security, describing this correlation. Countless examples exist anecdotally, including the reactions of Mexican and U.S. society in response to Central American migrant inflows.

¹³² The "Somos Mexicanos" program by the Mexican government tackles the integration of return migrants from the United States. Its rhetoric describes return migration as a 'welcome home,' encouraging returnees to think of Mexico in this way. Programs like "Somos Mexicanos" exemplify the dual approach the Mexican government takes to migration. In contrast, Central American asylees receive minimal re-integration services.

with contacts to help facilitate integration. It partners with various government agencies to provide social services, including the Secretary of Health and the Secretary of Education, the latter offering education incentives.¹³³ Such a program does not exist for refugees on a governmental level, although the work of NGOs address some of their integration concerns. This constitutes a failure on the part of the government to recognize the potential of all of its migrants. Such policy reveals the faults in the perception of migrant aid as taking away from Mexican nationals, as though security and stability are zero sum games with a quantifiable allotment to go around. They are reciprocal. The two can and should work in tandem.

Limitations

A number of limitations have prevented me from providing an accurate description of the human rights situation for migrants in Mexico with important policy implications. Primarily, the information may not exist. As discussed throughout this paper, human rights abuses are rarely documented due to fear of authorities, design and governance issues within Mexican human rights institutions themselves, and the corruption prevalent in the Mexican government. When these records do exist, such information is difficult to obtain. Scholars and NGOs frequently petition the Mexican government for information on abuses via the National Platform of Transparency (Plataforma Nacional de Transparencia, PNT), a process guaranteed by law under transparency requests. This system provides information access and transparency in theory, but

¹³³ This information comes from the “Repatriation Program” page of the official website of the National Institute for Migration.

in many instances, the respective government agencies themselves may not even have the relevant information or compile it in a standardized way.

The National Human Rights Commission publishes reports of every claim along with their recommendations, but these represent only a fraction of the total number of abuses. Furthermore, the process of reporting and documenting human rights abuses in Mexico is lengthy. Cases must move through a vast bureaucratic system and government data collection takes time. But in the changing dynamics of migration through Mexico, reports become outdated almost as soon as they come to light. These limitations in information collection leave those who research human rights in Mexico grasping for ground to stand on and working within a significantly restricted scope with respect to what cannot be known. As such, a more complete picture of human rights abuses in Mexico must be strung together via the accounts that we have.

As such, my policy recommendations have been made under conditions of limited knowledge that restricts their efficacy. Assessing policy is difficult enough without working within conditions of restricted information. Policy is only as good as the accuracy of the information it is based on. As such, these recommendations must be considered with the knowledge that they might fail to address the extent of the human rights context for migrants in Mexico or particular concerns not known by the data available.

Furthermore, it is important to state that the policy options I outline are those that I consider best for implementation by the government of Mexico. Numerous NGOs have published reports on best practices for handling the human rights crisis for migrants in Mexico, but few take into account their feasibility in practice.¹³⁴ Mexico must contend with a number of

¹³⁴ Human Rights Watch, Amnesty International, and the UN High Commissioner for Refugees (UNHCR) have done a variety of work on the status of human rights and migrant rights in Mexico. Human Rights Watch, in particular, issues yearly reports on the status of human rights in the country, including migrant-specific issues.

factors that limit its capacity to create policy in the best interest of human rights, many of which I have discussed throughout the course this paper. Policy does not exist in a vacuum, and I do not seek to make recommendations without considering Mexico's present circumstances. If human rights workers wish to see their policy goals realized, they must come to grips with the reality of state interests and diplomacy and offer solutions that do not assume a perfect world in which human rights is always the priority. As such, the policy options I offer are not necessarily the best practices for improving human rights for migrants in Mexico, but they are concrete ways to maximize such improvements that are possible and even beneficial to the state.

Domestic NGOs have done a large amount of research and policy recommendations as well. With respect to migration through Mexico, look to Sin Fronteras IAP. The Institute for Women in Migration has issued a number of reports as well, their focus being gender. For non-migration specific human rights issues, see the work of the Mexican Commission for Defense and Promotion of Human Rights (CMDPDH).

Chapter 5 - Drowning on dry land

Concluding Note

Migration through Mexico is a phenomenon that occurs under the surface of society. Documentation, in a sense, verifies and validates identity, granting worth in the eyes of the state. For the migrants who leave Central America in search of home, their undocumented status pushes them under the gaze of the Mexican public. Their presence is not acknowledged within its communities and the nature of their traumas or histories are not asked. Migrants who complete the journey retain a silence surrounding the specifics of their migration, making it to the United States and disappearing beneath the fabric of society, existing within the shadows. Mexico, however, looms like a giant in the background.

Those who make it to the United States represent only a fraction of those who leave. For every migrant who makes it past the internal border checkpoints or receives asylum, there are many more who did not make it. This reality leaves several questions dangling in the background of immigration dialogues on the U.S. side of the border: What transpires within these journeys that sends them back? What trauma rests so deep that words fail to describe it? Why do many more continue to move despite the perils?

Reading the stories of those who have left Central America in search of safety reveals the hope that permeates the migrant narrative. Individuals move for a variety of reasons, each carrying a unique past and circumstance etched onto their identity: for a better life, to be with family again, to have enough to eat, not to have to live with death looming over the shoulders.

For Central Americans, the promise of the United States sits like a beacon on the horizon. Like a mirage in the desert, close enough to touch but collapsing in the distance as the miles of Mexico stretch out ahead of them.

This paper is an attempt to bring these abuses to the surface, to examine in exhumation. To understand why thousands of Central Americans continue to make the decision each year to migrate to the United States and why as a society we have failed to address the spiraling insecurity they face in the country that stands in between themselves and safety.

I move beyond death, however, to offer a level of hope as an argument that migration need not be at the risk of death. Day by day, humanity reveals itself along the migrant trail. An albergue nestled within a church in Chiapas provides water and shelter. A grandmother in Veracruz hands a meal to a man on a break from riding La Bestia. A professor in Mexico City volunteers her weekends to read to unaccompanied children far from home and making the journey alone. These are powerful displays of humanity and are evidence of the capacity of individuals to produce change. However, they are insufficient to address the extent of the crisis. Within North America, thousands of migrants are drowning on dry land. The state must find within itself a level of humanitarianism to reach out and offer a hand.

As developed throughout this paper, several policy options are available to the government of Mexico that can begin to address the abuses that migrants face in its territory and ensure that the rights to security, due process, and refugee status are guaranteed for them. Ending the practice of detention during refugee status processing would offer a means of traversing the country legally free from networks of abuse and insecurity. Expanding refugee status to all those who need it, particularly in the North of Mexico in which reforms have been less extensive,

would ensure that migrants are informed of and receive the protections they are afforded in law. Lastly, granting the National Human Rights Commission prosecutorial authority and ensuring due process for human rights cases on a state level would provide recourse and discourage abuses from occurring. These policies, within Mexico's reach, have the potential to improve the human rights situation for migrants and implement the progressive human rights law that exists already.

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